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of the policies and specific performance of the contract, he was entitled to damages on such a basis. Probably reformation was an appropriate remedy. *Smith v. Jordan*, 13 Minn. 264. However, such was not the relief sought. The result reached follows the weight of authority and the prior decisions of the same court in holding that damages in an action of deceit are to be measured by the difference in value between what the plaintiff received and what he would have received had the representations been true. *Heddin v. Griffin*, 136 Mass. 229; *Lunn v. Shermer*, 93 N. C. 164. The minority, and seemingly the correct, view considers the plaintiff's loss and awards the difference in value between what he gave and what he received. *Smith v. Bolles*, 132 U. S. 125. In the principal case the plaintiff had received a benefit by way of insurance for ten years. His loss was therefore the difference between the value of this insurance and the amount paid in premiums. It is submitted that on principle the damages should have been so measured. See 14 HARV. L. REV. 454.

EQUITY — INJUNCTION — CRIMINAL PROCEEDINGS. — The plaintiff asked for an injunction to restrain the defendant, the Police Commissioner of New York City, from a threatened interference with his business for violation of the Sunday law. *Held*, that the injunction cannot be granted. *Eden Musee American Co. v. Bingham*, 125 N. Y. App. Div. 780.

For a discussion of the principles involved, see 14 HARV. L. REV. 293.

GIFTS — IMPERFECT GIFT — APPOINTMENT OF DONEE AS EXECUTRIX. — A expressed an intention to give his wife B some bonds, but died before the gift was completed, having appointed B his executrix. *Held*, that the imperfect gift is perfected by the vesting of the property in B as executrix, and that the intention to give the beneficial interest to B is sufficient to countervail the equity of the beneficiaries under the will. *Stewart v. McLaughlin*, [1908] 2 Ch. 251.

This decision, carried to its logical extension, would permit a testator to make a valid gift to his executor by merely telling him that he might on the testator's death take whatever personality he cared to. It is submitted that on principle this doctrine is wholly unsound. For the transaction here cannot take effect as a trust, since an intended gift, which has failed, cannot be converted into an unintended trust. *Richards v. Delbridge*, L. R. 18 Eq. 11. Nor can it be sustained as a gift *inter vivos*, for there was no delivery. *Allen-West Commission Co. v. Grumbles*, 129 Fed. 287. Nor is it to be supported as a testamentary disposition, since it lacks the formalities required by the Wills Act. And though upon the death of a testator the legal title is vested in the executor, nevertheless, it is held in a representative capacity, and a promise of a testator, though based upon a meritorious consideration, does not give rise to an equity which can be successfully interposed at the suit of a beneficiary. *Whitaker v. Whitaker*, 52 N. Y. 368.

INDICTMENT AND INFORMATION — FINDING AND FILING INDICTMENT — EXAMINATION OF ACCUSED BEFORE GRAND JURY. — The defendants were compelled to be sworn as witnesses before the grand jury, and to answer questions not incriminating themselves, but later they were indicted. *Held*, that the indictment should not be quashed. *U. S. v. Price*, 39 N. Y. L. J. 2167 (Circ. Ct., S. D. N. Y., Aug. 1908).

The defendant in a criminal case cannot be made to go upon the witness stand. *Low v. Mitchell*, 18 Mo. 372. A witness, whether a party or not, may not be compelled to give testimony incriminating himself. *Coburn v. Odell*, 30 N. H. 540. The question in the principal case is whether the defendant, when compelled to be sworn as a witness, was a party to a criminal case. The weight of authority holds that criminal proceedings are not instituted until a formal charge has been made against the accused. The examination of witnesses before the grand jury is no part of the criminal proceedings against the accused, but is merely to assist the grand jury in determining whether such proceedings shall be commenced. *Post v. U. S.*, 161 U. S. 583. Grand juries may seek information from persons conversant with the matter under investigation, and are not bound to exclude a person because it may happen ultimately that an indictment be found against him. *U. S. v. Kimball*, 117 Fed. 156. A re-

cent case to the contrary seems insupportable in that it confuses a witness's privilege with a party's rights. *People v. Gillette*, 39 N. Y. L. J. 1293 (N. Y., App. Div., June, 1908).

INJUNCTIONS — ACTS RESTRAINED — BALANCE OF CONVENIENCE DOCTRINE. — The defendant company constructed a system of sewage which extended on the plaintiff's land. The plaintiff prayed for an injunction to abate the nuisance caused by the discharge of sewage. *Held*, that the plaintiff is not entitled to an injunction. *Somerset Water, Light & Traction Co. v. Hyde*, 111 S. W. 1005 (Ky.).

The case follows numerous decisions which consider public convenience in the question of granting an injunction. *Valparaiso v. Hagen*, 153 Ind. 337. That this "balance of convenience" doctrine should be applicable to cases where the injury complained of is trivial seems reasonable. *Elliott v. Ferguson*, 103 S. W. 453 (Tex.). But its application in cases where the injury is substantial and the legal remedy admittedly inadequate seems as indefensible in principle as it is harsh in its results. The doctrine seems to rest upon two misconceptions of the extent of equitable power: the one, that the final settlement of property rights lies in a broad discretion of the chancellor and not in the clear legal and equitable rules which bind the chancellor himself; the other, that a court of equity may in effect condemn the property of an individual in the interest of the public, a power which the Constitution has placed in the legislature alone. *Sammons v. City of Gloversville*, 70 N. Y. Supp. 284; *Simmons v. Mayor, etc., of Paterson*, 60 N. J. Eq. 385. Further, the doctrine seems unwise in determining the standard of one person's right by the convenience of a particular public, or even, in its extension, by the necessities of another's business. *Lloyd v. Catlin Coal Co.*, 210 Ill. 460.

INJUNCTIONS — INTERFERENCE WITH CONTRACTS — TRADING STAMP BUSINESS. — The plaintiff sold non-transferable trading stamps, redeemable at its stores, to merchants, who gave them to customers as a premium upon cash purchases. The defendant, a rival concern, purchased from holders or exchanged for its own stamps large quantities of the plaintiff's stamps which they sold to brokers, redeemed in large lots, or resold to the plaintiff's subscribers at a low rate. The plaintiff prayed for an injunction restraining the defendant from such practice. *Held*, that the plaintiff is entitled to an injunction. *Sperry & Hutchinson Co. v. Louis Weber & Co.*, 161 Fed. 219 (Circ. Ct., N. D. Ill.). See NOTES, p. 50.

JUDGMENTS — ESSENTIALS TO VALIDITY — WAIVER BY TESTATOR OF PERSONAL SERVICE ON EXECUTOR. — A, of Michigan, agreed with B, of Massachusetts, to submit a matter in dispute to arbitration under rule of court, the award to be binding on their executors in case of death. A died before the final award, and after notice by publication on A's executors judgment was given for B. *Held*, that the judgment is not binding on A's executors in Michigan. *Brown v. Fletcher*, 210 U. S. 82.

The "full faith and credit" clause of the Constitution does not prevent the court of a state in which the judgment of a sister state is presented from impeaching it for want of jurisdiction. *Thompson v. Whitman*, 18 Wall. (U. S.) 457. The test of jurisdiction is to be made at the time of verdict, not at the time of the commencement of the suit. Thus, jurisdiction over a citizen of another state is lost by his death, and it cannot be revived against his foreign executor, for personal service dies with the person. *Jones v. Jones*, 15 Tex. 463. A contract to waive personal service on oneself is probably good. See 15 HARV. L. REV. 746. But a contract to waive personal service on one's foreign executor has no effect. For a contract waiving appearance can give no greater right than actual appearance, and if an executor voluntarily submits to the jurisdiction of a foreign court, a judgment by that court is not binding on the estate, since an executor's representative character is a qualified one and cannot be extended beyond the jurisdiction of the court which created it. *Judy v. Kelley*, 11 Ill. 211.